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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re:

Chapter 7

JENNIFER A. MATTEO, a/k/a
JENNIFER A. SMALLWOOD,

Case No. 11-13323-1-REL

Debtor.

In Re:

Chapter 7

MARK ROBERT MATTEO,

Case No. 11-12475-REL

Debtor.

MARC S. EHRLICH, as Chapter 7 Trustee,

Plaintiff,

v.

Adv. Pro. No.: 12-90024

STATE EMPLOYEES FEDERAL CREDIT
UNION, JENNIFER A. MATTEO a/k/a
JENNIFER A. SMALLWOOD and MARK R.
MATTEO, ARVON FUNDING, LLC, MORGAN
LINEN SERVICE, INC., SYSCO ALBANY, INC.
f/k/a SYSCO FOODSERVICES OF ALBANY
LLC, a division of SYSCO CORPORATION,
NEW YORK STATE DEPARTMENT OF
TAXATION & FINANCE, CCM ASSOCIATES
OF CLIFTON PARK LLC, CHASE BANK USA,
NA, COUNTY OF SARATOGA, DEPARTMENT
OF THE TREASURY – INTERNAL REVENUE
SERVICE and ADVANTAGE ASSETS II, INC.,

**DECLARATION OF
PAUL J. MCGEOUGH IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

**Hearing Date: July 25, 2012 at 9:15 a.m. –
U.S. Bankruptcy Court, NDNY
445 Broadway
James T. Foley U.S. Courthouse
Albany, New York 12207**

Defendants.

I, PAUL J. MCGEOUGH, hereby declare under penalty of perjury:

1. I am an attorney duly admitted to practice under the law of the State of New York and the United States Bankruptcy Court for the Northern District of New York. I am an attorney with Fidelity National Law Group, attorneys for Defendant State Employees Federal Credit Union (hereinafter, "Defendant" or "SEFCU") in the instant action. I submit this declaration in support of the Defendant's opposition to Plaintiff's motion for summary judgment.

2. By deed dated March 7, 2002, David J. Kaiser and Judy L. Kaiser conveyed the property located at 36 Timberwick Drive, Clifton Park, New York (the "Property") to debtor Jennifer Matteo (the "Kaiser Deed"). A copy of the Kaiser Deed is annexed to the affidavit of Mark Ehrlich, Esq. in support of Plaintiff's motion for summary judgment (hereinafter the Ehrlich Aff.) as Exhibit "A".

3. The description of the Property contained in the Kaiser Deed is as follows :

All that certain tract, piece or parcel of land, with the buildings and improvement thereon, situate, lying and being in the Town of Halfmoon, County of Saratoga, State of New York, known and designated as Lot #36 Timberwick Drive on a map entitled "Timberwick Phase II - Section I as prepared for Colony Craft Homes, Inc.", made by Percy B. Cotton Associates, dated July 17, 1989, and filed in the Saratoga County Clerk's Office on May 22, 1990, as Map T117 A-H.

Emphasis added.

4. By deed dated February 3, 2009, Jennifer Matteo conveyed the Property from herself individually to herself and Mark Matteo, jointly (the "Matteo Deed"). A copy of the Matteo Deed is annexed to the Ehrlich Aff. as Exhibit "D".

5. The Matteo Deed contains the following clause:

BEING the same premises conveyed to the grantor herein by David J. Kaiser, Jr. and Judy L. Kaiser, by deed dated the 7th day of March, 2002 and recorded in the Saratoga County Clerk's Office on the March 14, 2002 in Liber 1607 at Page 8.

6. On February 3, 2009, SEFCU loaned \$417,000 to the Matteos. As collateral security for the \$417,000 loan, the Matteos executed and delivered a mortgage in the original principal amount of \$417,000 to SEFCU. That mortgage, dated February 3, 2009, was recorded in the Saratoga County Clerk's Office on February 18, 2009 under instrument number 2009004746 (hereinafter the "SEFCU Mortgage"). The SEFCU Mortgage is attached to the Ehrlich Aff. as Exhibit "C".

7. Page 3 of the SEFCU Mortgage accurately references the address of the Property in a paragraph entitled "Description of Property" which states, "I give Lender rights in the property described in (A) through (G) below: (A) The property which is located at 36 Timberwick Drive...".

8. Schedule A to the SEFCU Mortgage contains a description of the Property which describes the lot to the Property as "Lot 1136" instead of "Lot # 36".

9. On June 9, 2010, SEFCU file an action in the Supreme Court of the State of New York for foreclosure of the SEFCU Mortgage (the "Foreclosure Action"). A copy of the complaint in the Foreclosure Action is annexed to the Ehrlich Aff. as Exhibit "E" and is also contained in Exhibit "F".

10. Since neither Exhibit to the Ehrlich Aff. contains a complete copy of the complaint from the Foreclosure Action, a true and correct copy is annexed hereto as **Exhibit "A"**.

11. As part of the Foreclosure Action, SEFCU also sought to reform the SEFCU Mortgage and the Matteo Deed to read: “Lot #36” rather than “Lot 1136”. See Second Cause of Action to the Foreclosure Action.

12. On June 9, 2010, in connection with the Foreclosure Action, SEFCU recorded a Notice of Pendency with the Saratoga County Clerk as instrument number 2010017814, which identifies the mortgaged premises as 36 Timberwick Drive, Clifton Park, NY 12065, SBL# 278.19-3-5, on its front page (the “Notice of Pendency”).

13. Exhibit “F” to the Ehrlich Aff. contains an incomplete version of the Notice of Pendency in that it deletes “Schedule A – description of the Premises” which identifies the parcel as: “Lot #36”, while the Notice of Pendency filed as instrument number 2010017814 correctly describes the Property. The Trustee’s Complaint, Exhibit F, contains the same incomplete copy of the Notice of Pendency.

14. Annexed hereto as **Exhibit “B”** is a true and correct copy of the Notice of Pendency maintained by the Saratoga County Clerk containing all four (4) pages.

15. The Notice of Pendency Property description entitled: “Schedule A – description of the Premises” identifies the parcel as: “Lot #36 Timberwick Drive”.

16. The Bankruptcy Trustee’s Title Agency discovered on record the Notice of Pendency and certified that on searching the record it found 14 Liens and the Notice of Pendency and reproduced the Lien Documents and the incomplete Notice of Pendency. Ehrlich Aff., Exhibit F.

17. On or about August 1, 2011, Mark Matteo filed a voluntary petition with this Court under Chapter 7 of Title 11 of the United States Code (Case No. 11-12475-1-REL).

18. On or about October 25, 2011, Jennifer Matteo filed a voluntary petition with this Court under Chapter 7 of Title 11 of the United States Code (Case No. 11-13323-1-REL).

19. The Notice of Pendency, which provides notice to the world of the Foreclosure Action was a matter of public record as of the petition filing dates of both Mark and Jennifer Matteo.

20. An electronic search of the electronic indexes of Saratoga County for the entry “Matteo Mark” or “Matteo Jennifer” results in the finding of the Matteo Deed, the SEFCU Mortgage and the Notice of Pendency all recorded prior to the Matteos’ petition dates. Copies of printouts obtained from my searches of “Matteo Mark” or “Matteo Jennifer” in the Saratoga County public records are annexed hereto as **Exhibit “C”**.

Dated: New York, New York
July 17, 2012

/s/ Paul J. McGeough
By: Paul J. McGeough